

AMENDED IN ASSEMBLY APRIL 23, 2007
AMENDED IN ASSEMBLY FEBRUARY 1, 2007
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 69

Introduced by Assembly Member Lieu

December 4, 2006

An act to amend Section 12102.1 of the Financial Code, relating to check sellers, bill payers, and proraters. An act to add Division 21 (commencing with Section 60000), Division 22 (commencing with Section 70000), and Division 23 (commencing with Section 80000) to, and to repeal Division 3 (commencing with Section 12000) of, the Financial Code, relating to debt, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 69, as amended, Lieu. ~~Check sellers, bill payers, and proraters.~~
Debt management and settlement: credit counselors.

Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor. This law exempts from its requirements a nonprofit community service organization that meets specified requirements, including having consumer credit education and counseling as its principal functions. Under this law, the exemption becomes inoperative upon enactment of a statute requiring licensure and regulation of a nonprofit community organization providing consumer credit counseling.

This bill would repeal the Check Sellers, Bill Payers and Proraters Law.

The bill would enact the Uniform Debt Settlement Services Act and would, commencing June 1, 2008, provide for the registration and regulation by the commissioner of providers, defined as persons who provide, offer to provide, or agree to provide debt settlement services, as defined, directly or through others. The bill would require a provider to submit specified fees and an application for registration with the commissioner under penalty of perjury. The bill would create the Debt Settlement Services Fund, which would be continuously appropriated for the purposes of administering the act, and would require all fees collected by the commission to be deposited in the fund. The bill would specify the conditions under which the commissioner may issue or deny registration as a provider, would require renewal of a provider's registration on an annual basis, and would require a provider to satisfy certain requirements before entering into an agreement with an individual for the provision of debt settlement services, including providing specified disclosures. The bill would require an agreement for debt settlement services to contain specified terms and would impose limits on the fees charged by providers. The bill would prohibit providers from engaging in specified practices. The bill would authorize the commissioner to take enforcement actions against a provider for violations of the bill's provisions and would also authorize an injured individual to recover specified damages from a provider that violates the bill's provisions.

The bill would also enact the Debt Management Act and would, commencing June 1, 2008, provide for the licensure and regulation by the commissioner of providers of debt management services, defined as persons who solicit debt management service business within this state, and in connection with that solicitation and in return for a fee, as specified, provide debt management services, as defined, to a consumer residing in this state. The bill would require an applicant for licensure to submit fees, as determined by the commissioner, and an application to the commissioner. The bill would create the Debt Management Fund, which would be continuously appropriated for the purposes of administering the act, and would require all fees collected by the commissioner to be deposited in the fund. The bill would also require, at the time of filing the application, an applicant to provide the commissioner with a cash or surety bond, cash, a certificate of deposit, or government bonds for \$25,000. The bill would require

licensees to deposit in a trust account, as specified, all funds received from or on behalf of a consumer for payment to a creditor and would impose various requirements on licensees with respect to the maintenance of those trust accounts. The bill would require consumers and licensees to execute a specified written agreement prior to the licensee performing debt management services and would require the licensee to provide that completed written agreement to the consumer. The bill would authorize the commissioner or an aggrieved consumer to take specified enforcement actions against a licensee for a violation of the act's provisions.

The bill would also enact the Credit Counselors Law and would, commencing June 1, 2008, provide for the licensure and regulation by the commissioner of agencies, defined as a nonprofit community service organization that meets specified criteria, including providing consumer credit education and counseling and arranging and administering debt management plans and debt settlement plans. The bill would prescribe the requirements for licensure, including establishment of a trust account and payment of a specified fee, and the grounds for denial of a license. The bill would impose various requirements on licensees, including maintaining of a surety bond, limiting the fees the licensee may charge the consumer, requiring the licensee to adopt and implement best practices, and requiring specified disclosures and notices. The bill would require the licensee to pay an annual assessment to the commissioner for administration of the licensure law and would authorize specified enforcement actions for violations of the law. The bill would require a licensee to submit audited financial statements, with a specified declaration signed under penalty of perjury, to the commissioner annually.

Because the bill would expand the crime of perjury, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Check Sellers, Bill Payers, and Proraters Law, prohibits a person from engaging in certain forms of business for compensation without a license from the Commissioner of Corporations;~~

including selling checks, drafts, money orders, or other commercial paper serving the same purpose.

~~This bill would make nonsubstantive changes to the Check Sellers, Bill Payers, and Proraters Law.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Division 3 (commencing with Section 12000) of*
2 *the Financial Code is repealed.*

3 *SEC. 2. Division 21 (commencing with Section 60000) is added*
4 *to the Financial Code, to read:*

5
6 *DIVISION 21. DEBT SETTLEMENT SERVICES*

7
8 *CHAPTER 1. GENERAL PROVISIONS*

9
10 60000. *This division shall be known and may be cited as the*
11 *Uniform Debt Settlement Services Act.*

12 60001. *As used in this division, the following definitions shall*
13 *apply:*

14 (a) *“Affiliate” means any of the following:*

15 (1) *With respect to individuals, the term means any of the*
16 *following:*

17 (A) *The spouse of the individual.*

18 (B) *A sibling of the individual or the spouse of a sibling.*

19 (C) *An individual or the spouse of an individual who is a lineal*
20 *ancestor or lineal descendant of the individual or the individual’s*
21 *spouse.*

22 (D) *An aunt, uncle, great aunt, great uncle, first cousin, niece,*
23 *nephew, grandniece, or grandnephew, whether related by the*
24 *whole or the half blood or adoption, or the spouse of any of them.*

25 (E) *Any other individual occupying the residence of the*
26 *individual.*

27 (2) *With respect to an entity, the term means any of the*
28 *following:*

29 (A) *A person that directly or indirectly controls, is controlled*
30 *by, or is under common control with the entity.*

1 (B) *An officer of, or an individual performing similar functions*
2 *with respect to, the entity.*

3 (C) *A director of, or an individual performing similar functions*
4 *with respect to, the entity.*

5 (D) *Subject to adjustment of the dollar amount pursuant to*
6 *subdivision (f) of Section 60048, a person that receives or received*
7 *more than twenty-five thousand dollars (\$25,000) from the entity*
8 *in either the current year or the preceding year or a person that*
9 *owns more than 10 percent of, or an individual who is employed*
10 *by or is a director of, a person that receives or received more than*
11 *twenty-five thousand dollars (\$25,000) from the entity in either*
12 *the current year or the preceding year.*

13 (E) *An officer or director of, or an individual performing similar*
14 *functions with respect to, a person described in subparagraph (A).*

15 (F) *The spouse of, or an individual occupying the residence of,*
16 *an individual described in subparagraphs (A) to (E), inclusive.*

17 (G) *An individual who has the relationship specified in*
18 *subparagraph (D) of paragraph (1) to an individual or the spouse*
19 *of an individual described in subparagraphs (A) to (E), inclusive.*

20 (b) *“Agreement” means an agreement between a provider and*
21 *an individual for the performance of debt settlement services.*

22 (c) *“Bank” means a financial institution, including a*
23 *commercial bank, savings bank, savings and loan association,*
24 *credit union, mortgage bank, and trust company, engaged in the*
25 *business of banking, chartered under federal or state law, and*
26 *regulated by a federal or state banking regulatory authority.*

27 (d) *“Business address” means the physical location of a*
28 *business, including the number and name of a street.*

29 (e) *“Certified debt specialist” means an individual certified by*
30 *a training program or certifying organization that authenticates*
31 *the competence of individuals providing assistance to other*
32 *individuals in connection with debt settlement services.*

33 (f) *“Commissioner” means the Commissioner of Corporations.*

34 (g) *“Concessions” means assent to repayment of a debt on*
35 *terms more favorable to an individual than the terms of the contract*
36 *between the individual and a creditor.*

37 (h) *“Day” means calendar day.*

38 (i) *“Debt settlement services” means services as an intermediary*
39 *between an individual and one or more creditors of the individual*
40 *for the purpose of obtaining concessions without receiving money*

1 from the individual with the intent to distribute the money to the
2 individual's creditor. "Debt settlement services" does not include,
3 any of the following:

4 (1) Legal services provided in an attorney-client relationship
5 by an attorney licensed to practice law in this state.

6 (2) Accounting services provided in an accountant-client
7 relationship by a certified public accountant licensed to provide
8 accounting services in this state.

9 (3) Financial-planning services provided in a financial
10 planner-client relationship by a member of a financial-planning
11 profession whose members the commissioner, by rule, determines
12 are licensed under Chapter 3 (commencing with Section 25230)
13 of Part 3 of Division 4 of the Corporations Code, and are subject
14 to a disciplinary mechanism, a code of professional responsibility,
15 and a continuing education requirement.

16 (4) Credit counseling services provided by an agency licensed
17 under Division 23 (commencing with Section 80000).

18 (j) "Entity" means a person other than an individual.

19 (k) "Good faith" means honesty in fact and the observance of
20 reasonable standards of fair dealing.

21 (l) "Person" means an individual, corporation, business trust,
22 estate, trust, partnership, limited liability company, association,
23 joint venture, or any other legal or commercial entity. The term
24 does not include a public corporation, government, or
25 governmental subdivision, agency, or instrumentality.

26 (m) "Program" means a program or strategy in which a
27 provider furnishes debt settlement services, that contemplate that
28 creditors will settle debts for less than the full principal amount
29 of debt owed to an individual, to which the individual makes
30 payments directly to the creditors.

31 (n) "Principal amount of the debt" means the amount of a debt
32 at the time of the execution of the agreement.

33 (o) "Provider" means a person that provides, offers to provide,
34 or agrees to provide debt settlement services directly or through
35 others.

36 (p) "Record" means information that is inscribed on a tangible
37 medium or that is stored in an electronic or other medium and is
38 retrievable in perceivable form.

39 (q) "Settlement fee" means a charge imposed on or paid by an
40 individual in connection with a creditor's assent to accept in full

1 *satisfaction of a debt an amount less than the principal amount of*
2 *the debt.*

3 (r) “Sign” means, with present intent to authenticate or adopt
4 a record, either of the following:

5 (1) To execute or adopt a tangible symbol.

6 (2) To attach to, or logically associate with, the record an
7 electronic sound, symbol, or process.

8 (s) “State” means a state of the United States, the District of
9 Columbia, Puerto Rico, the United States Virgin Islands, or any
10 territory or insular possession subject to the jurisdiction of the
11 United States.

12 60002. This division shall not apply to the following persons
13 or their employees when the person or the employee is engaged
14 in the regular course of the person’s business or profession:

15 (a) A judicial officer, a person acting under an order of a court
16 or an administrative agency, or an assignee for the benefit of
17 creditors.

18 (b) A bank.

19 (c) An affiliate of a bank if the affiliate is regulated by a federal
20 or state banking regulatory authority.

21 (d) A title insurer, escrow company, or other person that
22 provides bill-paying services if the provision of debt settlement
23 services is incidental to the bill-paying services.

24 60003. All fees collected by the commissioner pursuant to this
25 division shall be deposited in the Debt Settlement Services Fund,
26 which is hereby created in the State Treasury and, notwithstanding
27 Section 13340 of the Government Code, is continuously
28 appropriated to the Department of Corporations for the purposes
29 of administering this division.

30
31 *CHAPTER 2. REQUIREMENTS FOR REGISTRATION*
32

33 60010. (a) Except as otherwise provided in subdivision (b), a
34 provider shall not provide debt settlement services to an individual
35 who it reasonably should know resides in this state at the time it
36 agrees to provide the services, unless the provider is registered
37 under this division.

38 (b) If a provider is registered under this division, subdivision
39 (a) shall not apply to an employee or agent of the provider.

1 (c) *The commissioner shall maintain and publicize a list of the*
2 *names of all registered providers.*

3 (d) *A provider of debt settlement services shall be registered if*
4 *it is organized and properly operating as a for-profit entity under*
5 *the law of the state in which it was formed.*

6 60011. (a) *An application for registration as a provider shall*
7 *be in a form prescribed by the commissioner.*

8 (b) *Subject to adjustment of dollar amounts pursuant to*
9 *subdivision (f) of Section 60048, an application for registration*
10 *as a provider shall be accompanied by the following:*

11 (1) *The fee established by the commissioner.*

12 (2) *Evidence of aggregate umbrella insurance in the amount of*
13 *two hundred fifty thousand dollars (\$250,000), as follows:*

14 (A) *Against the risks of dishonesty, fraud, theft, and other*
15 *misconduct on the part of the applicant or a director, employee,*
16 *or agent of the applicant.*

17 (B) *Issued by an insurance company authorized to do business*
18 *in this state and rated at least "A" by a nationally recognized*
19 *rating organization, with a maximum deductible of ten thousand*
20 *dollars (\$10,000).*

21 (C) *Payable to the applicant, the individuals who have*
22 *agreements with the applicant, and this state, as their interests*
23 *may appear.*

24 (D) *Not subject to cancellation by the applicant without an*
25 *effective policy in place to cover the canceled insurance.*

26 (3) *Proof that the applicant has filed appropriate documents*
27 *with either the Secretary of State or the county in which the*
28 *applicant is located to conduct a business in California.*

29 60012. *An application for registration shall be signed under*
30 *penalty of perjury and shall include the following:*

31 (a) *The applicant's name, principal business address and*
32 *telephone number, and all other business addresses in this state,*
33 *e-mail addresses, and Internet Web site addresses.*

34 (b) *All names under which the applicant conducts business.*

35 (c) *The address of each location in this state at which the*
36 *applicant shall provide debt settlement services or a statement*
37 *that the applicant will have no such location.*

38 (d) *The name and home address of each officer and director of*
39 *the applicant and each person that owns at least 10 percent of the*
40 *applicant.*

1 (e) Identification of every jurisdiction in which, during the five
2 years immediately preceding the application, either of the following
3 apply:

4 (1) The applicant or any of its officers or directors has been
5 licensed or registered to provide debt settlement services.

6 (2) Individuals have resided when they received debt settlement
7 services from the applicant.

8 (f) A statement describing, to the extent it is known or should
9 be known by the applicant, any material civil or criminal judgment
10 or litigation and any material administrative or enforcement action
11 by a governmental agency in any jurisdiction against the applicant,
12 any of its officers, directors, owners, or agents.

13 (g) Evidence of accreditation or certification by an independent
14 accrediting or certification organization approved by the
15 commissioner.

16 (h) A description of the most commonly used educational
17 programs that the applicant provides or intends to provide to
18 individuals who reside in this state and a copy of any materials
19 used or to be used in those programs.

20 (i) A description of the applicant's financial analysis and initial
21 budget program, including any form or electronic model, used to
22 evaluate the financial condition of individuals.

23 (j) A copy of each form of agreement that the applicant will use
24 with individuals who reside in this state.

25 (k) The schedule of fees and charges that the applicant will use
26 with individuals who reside in this state.

27 (l) At the applicant's expense, the results of a criminal-records
28 check, including fingerprints, conducted within the immediately
29 preceding 12 months by the Department of Justice, covering every
30 officer of the applicant.

31 (m) A description of any ownership interest of at least 10 percent
32 by a director, owner, or employee of the applicant in either of the
33 following:

34 (1) An affiliate of the applicant.

35 (2) An entity that provides products or services to the applicant
36 or any individual relating to the applicant's debt settlement
37 services.

38 (n) The identity of each director who is an affiliate of the
39 applicant.

1 (o) Any other information that the commissioner reasonably
2 requires to issue a certificate of registration pursuant to Section
3 60015.

4 60013. An applicant or registered provider shall notify the
5 department within 10 days after a change in the information
6 specified in paragraph (2) of subdivision (b) of Section 60011 or
7 in subdivision (a), (c), (f), (j), or (k) of Section 60012.

8 60014. Except for the information required by subdivision (m)
9 of Section 60012, the addresses required by subdivision (d) of
10 Section 60012, and the financial information required by
11 subdivision (b) of Section 60017, the commissioner shall make the
12 information in an application for registration and renewal of
13 registration as a provider available to the public.

14 60015. (a) Except as otherwise provided in subdivisions (b)
15 and (c), the commissioner shall issue a certificate of registration
16 as a provider to a person that complies with Sections 60011 and
17 60012.

18 (b) The commissioner may deny registration for any of the
19 following:

20 (1) An application contains information that is materially
21 erroneous or incomplete.

22 (2) An officer, director, or owner of the applicant has been
23 convicted of a crime, or suffered a civil judgment, involving
24 dishonesty or the violation of state or federal securities laws.

25 (3) An applicant or any of its officers, directors, or owners has
26 defaulted in the payment of money collected for others.

27 (c) The commissioner shall deny registration if the application
28 is not accompanied by the fee established by the commissioner.

29 60016. (a) The commissioner shall approve or deny an initial
30 registration as a provider within 90 days after an application is
31 filed. In connection with a request pursuant to subdivision (o) of
32 Section 60012 for additional information, the commissioner may
33 extend the 90-day period for not more than 45 days. Within seven
34 days after denying an application, the commissioner, in a record,
35 shall inform the applicant of the reasons for the denial.

36 (b) If the commissioner denies an application for registration
37 as a provider or does not act on an application within the time
38 prescribed in subdivision (a), the applicant may appeal and request
39 a hearing pursuant to the California Administrative Procedure

1 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of
2 Division 3 of Title 2 of the Government Code).

3 (c) Subject to subdivision (d) Section 60017 and Section 60050,
4 a registration as a provider is valid for one year.

5 60017. (a) A provider shall obtain a renewal of its registration
6 annually.

7 (b) An application for renewal of registration as a provider
8 shall be in a form prescribed by the commissioner, signed under
9 penalty of perjury, and shall satisfy all of the following:

10 (1) Be filed no fewer than 30 and no more than 60 days before
11 the registration expires.

12 (2) Be accompanied by the fee established by the commissioner.

13 (3) Contain the matter required for initial registration as a
14 provider pursuant to subdivision (g) of Section 60012 and a
15 financial statement, reviewed by a certified public accountant, for
16 the applicant's fiscal year immediately preceding the application.

17 (4) Disclose any changes in the information contained in the
18 applicant's application for registration or its immediately previous
19 application for renewal, as applicable.

20 (5) Supply evidence of aggregate umbrella insurance that
21 satisfies all of the requirements of paragraph (2) of subdivision
22 (b) of Section 60011.

23 (6) Provide any other information that the commissioner
24 reasonably requires to perform the commissioner's duties under
25 this section.

26 (c) Except for the information required by subdivision (m) of
27 Section 60012, the addresses required by subdivision (d) of Section
28 60012, and the financial information required by subdivision (b),
29 the commissioner shall make the information in an application for
30 renewal of registration as a provider available to the public.

31 (d) If a registered provider files a timely and complete
32 application for renewal of registration, the registration remains
33 effective until the commissioner, in a record, notifies the applicant
34 of a denial and states the reasons for the denial.

35 (e) If the commissioner denies an application for renewal of
36 registration as a provider, the applicant, within 30 days after
37 receiving notice of the denial, may appeal and request a hearing
38 pursuant to the California Administrative Procedure Act (Chapter
39 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
40 Title 2 of the Government Code). Subject to Section 60050, while

1 *the appeal is pending the applicant shall continue to provide debt*
2 *settlement services to individuals with whom it has agreements. If*
3 *the denial is affirmed, subject to the commissioner's order and*
4 *Section 60050, the applicant shall continue to provide debt*
5 *settlement services to individuals with whom it has agreements*
6 *until, with the approval of the commissioner, it transfers the*
7 *agreements to another registered provider.*

8 *60018. If a provider holds a license or certificate of registration*
9 *in another state authorizing it to provide debt settlement services,*
10 *the provider may submit a copy of that license or certificate and*
11 *the application for it instead of an application in the form*
12 *prescribed by subdivision (a) of Section 60011, Section 60012, or*
13 *subdivision (b) of Section 60017. The commissioner shall accept*
14 *the application and the license or certificate from the other state*
15 *as an application for registration as a provider or for renewal of*
16 *registration as a provider, as appropriate, in this state if all of the*
17 *following are satisfied:*

18 *(a) The application in the other state contains information*
19 *substantially similar to or more comprehensive than that required*
20 *in an application submitted in this state.*

21 *(b) The applicant provides the information required by*
22 *subdivisions (a), (c), (h), (j), and (k) of Section 60012.*

23 *(c) The applicant, under penalty of perjury, certifies that the*
24 *information contained in the application is current or, to the extent*
25 *it is not current, supplements the application to make the*
26 *information current.*

27
28 *CHAPTER 3. DEBT SETTLEMENT SERVICES*
29

30 *60020. A provider shall act in good faith in all matters under*
31 *this division.*

32 *60021. A provider that is required to be registered under this*
33 *division shall maintain a toll-free communication system, staffed*
34 *at a level that reasonably permits an individual to speak to a*
35 *certified debt specialist or customer service representative, as*
36 *appropriate, during ordinary business hours.*

37 *60022. (a) Before providing debt settlement services, a*
38 *registered provider shall give the individual an itemized list of*
39 *goods and services and the charges for each. The list shall be clear*
40 *and conspicuous, be in a record the individual may keep whether*

1 *or not the individual assents to an agreement, and describe the*
2 *goods and services the provider offers as follows:*

3 *(1) Free of additional charge if the individual enters into an*
4 *agreement.*

5 *(2) For a charge if the individual does not enter into an*
6 *agreement.*

7 *(b) A provider shall not furnish debt settlement services unless*
8 *the provider, through the services of a certified debt specialist,*
9 *satisfies both of the following:*

10 *(1) Provides the individual with reasonable education about*
11 *the management of personal finance.*

12 *(2) Has prepared a financial analysis.*

13 *(c) Before an individual assents to an agreement to engage in*
14 *a program, a provider shall do both of the following:*

15 *(1) Provide the individual with a copy of the analysis and*
16 *program required by subdivision (b) in a record that identifies the*
17 *provider and that the individual may keep whether or not the*
18 *individual assents to the agreement.*

19 *(2) Inform the individual of the availability, at the individual's*
20 *option, of assistance by a toll-free communication system or in*
21 *person to discuss the financial analysis and program required by*
22 *subdivision (b).*

23 *(d) Before an individual assents to an agreement to engage in*
24 *a program, the provider shall inform the individual of all of the*
25 *following:*

26 *(1) The name and business address of the provider.*

27 *(2) All programs are not suitable for all individuals and an*
28 *individual may ask the provider about other ways, including*
29 *bankruptcy, to deal with indebtedness.*

30 *(3) Establishment of a program may adversely affect the*
31 *individual's credit rating or credit scores.*

32 *(4) Nonpayment of debt may lead creditors to increase finance*
33 *and other charges or undertake collection activity, including*
34 *litigation.*

35 *(5) Unless the individual is insolvent, if a creditor settles for*
36 *less than the full amount of the debt, the program may result in*
37 *the creation of taxable income to the individual, even though the*
38 *individual does not receive any money.*

39 *(6) Specific results cannot be predicted or guaranteed.*

1 (7) A program requires an individual to meet certain savings
2 goals in order to maximize settlement results.

3 (8) A provider does not provide accounting or legal advice to
4 individuals.

5 (9) A provider is an advocate that does not receive compensation
6 from an individual's creditors, banks, or third-party collection
7 agencies.

8 (10) A provider cannot force negotiations or settlements with
9 creditors but will advocate solely on behalf of an individual.

10 60023. (a) For purposes of this section, the following
11 definitions apply:

12 (1) "Federal act" means the Electronic Signatures in the Global
13 and National Commerce Act (15 U.S.C. Sec. 7001 et seq.).

14 (2) "Consumer" means an individual who seeks or obtains
15 goods or services that are used primarily for personal, family, or
16 household purposes.

17 (b) A provider may satisfy the requirements of Section 60022,
18 60024, or 60043 by means of the Internet or other electronic means
19 if the provider obtains a consumer's consent in the manner
20 provided by Section 101(c)(1) of the federal act (15 U.S.C. Sec.
21 7001(c)(1)).

22 (c) The disclosures and materials required by Section 60022,
23 60024, or 60043 shall be presented in a form that is capable of
24 being accurately reproduced for later reference.

25 (d) With respect to disclosure by means of an Internet Web site,
26 the disclosure of the information required by subdivision (d) of
27 Section 60022 shall appear on one or more screens that satisfy
28 both of the following:

29 (1) The screen contains no other information.

30 (2) An individual shall be able to see the screen before
31 proceeding to assent to formation of a program.

32 (e) At the time of providing the materials and agreement
33 required by subdivisions (c) and (d) of Section 60022, Section
34 60024, and Section 60043, a provider shall inform the individual
35 that upon electronic, telephonic, or written request, it will send
36 the individual a written copy of the materials, and shall comply
37 with a request as provided in subdivision (f).

38 (f) If a provider is requested, before the expiration of 90 days
39 after a program is completed or terminated, to send a written copy
40 of the materials required by subdivisions (c) and (d) of Section

1 60022, Section 60024, and Section 60043, the provider shall send
2 them at no charge within three business days after the request, but
3 the provider shall not be required to comply with a request more
4 than once per calendar month or if it reasonably believes the
5 request is made for purposes of harassment. If a request is made
6 more than 90 days after a program is completed or terminated,
7 the provider shall send within a reasonable time a written copy of
8 the materials requested.

9 (g) A provider that maintains an Internet Web site shall disclose
10 all of the following on the home page of its Web site or on a page
11 that is clearly and conspicuously connected to the home page by
12 a link that clearly reveals its contents:

13 (1) Its name and all names under which it does business.

14 (2) Its principal business address, telephone number, and e-mail
15 address, if any.

16 (3) The names of its principal officers.

17 (h) Subject to subdivision (i), if a consumer who has consented
18 to electronic communication in the manner provided by Section
19 101(c) of the federal act (15 U.S.C. Sec. 7001(c)) withdraws
20 consent as provided in the federal act, a provider may terminate
21 its agreement with the consumer.

22 (i) If a provider wishes to terminate an agreement with a
23 consumer pursuant to subdivision (h), it shall notify the consumer
24 that it will terminate the agreement unless the consumer, within
25 30 days after receiving the notification, consents to electronic
26 communication in the manner provided in Section 101(c) of the
27 federal act (15 U.S.C. Sec. 7001(c)).

28 60024. (a) An agreement under this division shall satisfy all
29 of the following requirements:

30 (1) Be in a record.

31 (2) Be dated and signed by the provider and the individual.

32 (3) Include the name of the individual and the address where
33 the individual resides.

34 (4) Include the name, business address, and telephone number
35 of the provider.

36 (5) Be delivered to the individual immediately upon formation
37 of the agreement.

38 (6) Disclose all of the following:

39 (A) The services to be provided.

1 (B) *The amount, or method of determining the amount, of all*
2 *fees, individually itemized, to be paid by the individual.*

3 (C) *How the provider will comply with its obligations under*
4 *subdivision (a) of Section 60043.*

5 (D) *That the individual may cancel the agreement as provided*
6 *in Section 60025.*

7 (E) *That the individual may contact the commissioner with any*
8 *questions or complaints regarding the provider.*

9 (F) *The address, telephone number, and Internet address or*
10 *Web site of the commissioner.*

11 (b) *For purposes of paragraph (5) of subdivision (a), delivery*
12 *of an electronic record occurs when it is made available in a format*
13 *in which the individual may retrieve, save, and print it and the*
14 *individual is notified that it is available.*

15 (c) *If the commissioner supplies the provider with any*
16 *information required under subparagraph (F) of paragraph (6)*
17 *of subdivision (a), the provider may comply with that requirement*
18 *only by disclosing the information supplied by the commissioner.*

19 (d) *An agreement under this division shall provide the following:*

20 (1) *That the individual has a right to terminate the agreement*
21 *at any time, without penalty or obligation, by giving the provider*
22 *written or electronic notice, in which case all powers of attorney*
23 *granted by the individual to the provider are revoked and*
24 *ineffective.*

25 (2) *That the provider shall notify the individual within five days*
26 *after learning of a creditor's decision to cease negotiation with*
27 *the provider. This notification shall include both of the following:*

28 (A) *The identity of the creditor.*

29 (B) *The right of the individual to modify or terminate the*
30 *agreement.*

31 (e) *An agreement may confer on a provider a power of attorney*
32 *to settle the individual's debt for no more than 50 percent of the*
33 *principal amount of the debt. An agreement shall not confer a*
34 *power of attorney to settle a debt for more than 50 percent of that*
35 *amount, but may confer a power of attorney to negotiate with*
36 *creditors of the individual on behalf of the individual. An*
37 *agreement shall provide that the provider shall obtain the assent*
38 *of the individual after a creditor has assented to a settlement for*
39 *more than 50 percent of the principal amount of the debt.*

40 (f) *An agreement shall not do any of the following:*

1 (1) Provide for application of the law of any jurisdiction other
2 than the United States and this state.

3 (2) Except as permitted by the California Arbitration Act (Title
4 9 (commencing with Section 1280) of Part 3 of the Code of Civil
5 Procedure), contain a provision that modifies or limits otherwise
6 available forums or procedural rights, including the right to trial
7 by jury, that are generally available to the individual under law
8 other than as provided in this division.

9 (3) Contain a provision that restricts the individual's remedies
10 under this division or under another law of this state.

11 (4) Contain a provision that does either of the following:

12 (A) Limits or releases the liability of any person for not
13 performing the agreement or for violating this division.

14 (B) Indemnifies any person for liability arising under the
15 agreement or this division.

16 (g) All rights and obligations specified in subdivision (d) and
17 Section 60025 exist even if not provided in the agreement. A
18 provision in an agreement that violates subdivision (d), (e), or (f)
19 is void.

20 60025. (a) An individual may cancel an agreement before
21 midnight of the third business day after the individual assents to
22 it, unless the agreement does not comply with subdivision (b) or
23 Section 60024 or 60044, in which case the individual may cancel
24 the agreement within 30 days after the individual assents to it. To
25 exercise the right to cancel, the individual shall give notice in a
26 record to the provider. Notice by mail is given when mailed.

27 (b) An agreement shall be accompanied by a form that contains
28 the following notice in bold-face type, surrounded by bold black
29 lines:

30
31
32 *Notice of Right to Cancel*

33 You may cancel this agreement, without any penalty or obligation, at any
34 time before midnight of the third business day that begins the day after you
35 agree to it by electronic communication or by signing it.

36 To cancel this agreement during this period, send an e-mail to

37
38 E-mail address of provider

39 or mail or deliver a signed, dated copy of this notice, or any other written
40 notice to _____

1 *Name of provider*
2 at _____ before midnight on _____
3 *Address of provider* *Date*
4 *If you cancel this agreement within the 3-day period, we will refund all*
5 *money you already have paid us.*
6 *You also may terminate this agreement at any later time, but we are not*
7 *required to refund fees you have paid us.*
8 *I cancel this agreement,*
9 _____
10 *Print your name*
11 _____
12 *Signature*
13 _____
14 *Date*
15
16

17 60026. *Unless the commissioner, by rule, provides otherwise,*
18 *the disclosures and documents required by this division shall be*
19 *in English. If a provider communicates with an individual primarily*
20 *in a language other than English, the provider shall furnish a*
21 *translation into the other language of the disclosures and*
22 *documents required by this division.*
23

24 *CHAPTER 4. FEES, ACTS, AND PRACTICES*
25

26 60040. (a) *Fees charged by a provider shall not exceed 25*
27 *percent of the amount of the debt brought into the program.*

28 (b) *A provider shall not impose directly or indirectly a fee or*
29 *other charge on an individual or receive money from or on behalf*
30 *of an individual for debt settlement services except as permitted*
31 *by this section.*

32 (c) *A provider shall not impose charges or receive payment for*
33 *debt settlement services until the provider and the individual have*
34 *signed an agreement that complies with Sections 60024 and 60044.*

35 (d) *If an individual assents to an agreement, a provider shall*
36 *not impose a fee or other charge for educational or counseling*
37 *services, or the like, except as otherwise provided in this*
38 *subdivision. The commissioner may authorize a provider to charge*
39 *an additional fee based on the nature and extent of the educational*

1 *or counseling services furnished by the provider but in no event*
2 *shall the fees exceed the limit specified in subdivision (a).*

3 *(e) If a payment to a provider by an individual under this*
4 *division is dishonored, a provider may impose a reasonable charge*
5 *on the individual, not to exceed the amount permitted by law.*

6 60041. *(a) If a provider imposes a fee or other charge or*
7 *receives money or other payments not authorized by Section 60040,*
8 *the individual may void the agreement and recover as provided in*
9 *Section 60051.*

10 *(b) If a provider is not registered as required by this division*
11 *when an individual assents to an agreement, the agreement shall*
12 *be voidable by the individual.*

13 *(c) If an individual voids an agreement pursuant to subdivision*
14 *(b), the provider shall not have a claim against the individual for*
15 *breach of contract or for restitution.*

16 60042. *If an individual who has entered into a fee agreement*
17 *fails for 60 days to make payments required by the agreement, a*
18 *provider may terminate the agreement.*

19 60043. *(a) A provider shall provide the accounting required*
20 *by subdivision (b), as follows:*

21 *(1) Upon cancellation or termination of an agreement.*

22 *(2) Before cancellation or termination of an agreement pursuant*
23 *to the following:*

24 *(A) At least once each month.*

25 *(B) Within five business days after a request by an individual,*
26 *but the provider shall not be required to comply with more than*
27 *one request in any calendar month.*

28 *(b) A provider, in a record, shall provide the following to each*
29 *individual for whom it has established a program if a creditor has*
30 *agreed to accept as payment in full an amount less than the*
31 *principal amount of the debt owed by the individual:*

32 *(1) The total amount and terms of the settlement.*

33 *(2) The amount of the debt when the individual assented to the*
34 *program.*

35 *(3) The amount of the debt when the creditor agreed to the*
36 *settlement.*

37 *(4) The calculation of a settlement fee.*

38 *(c) A provider shall maintain records for each individual for*
39 *whom it provides debt settlement services for five years after the*
40 *final payment made by the individual. A provider shall produce a*

1 *copy of those records and provide them to the individual within a*
2 *reasonable time after a request for the records. The provider may*
3 *use electronic or other means of storage of the records.*

4 60044. (a) A provider shall not, directly or indirectly, do any
5 *of the following:*

6 (1) *Settle a debt on behalf of an individual for more than 50*
7 *percent of the principal amount of the debt owed a creditor, unless*
8 *the individual assents to the settlement after the creditor has*
9 *assented.*

10 (2) *Take a power of attorney that authorizes it to settle a debt,*
11 *unless the power of attorney expressly limits the provider's*
12 *authority to settle debts for not more than 50 percent of the*
13 *principal amount of the debt owed a creditor.*

14 (3) *Exercise or attempt to exercise a power of attorney after an*
15 *individual has terminated an agreement.*

16 (4) *Initiate a transfer from an individual's account at a bank*
17 *or with another person unless the transfer is one of the following:*

18 (A) *A return of money to the individual.*

19 (B) *Before termination of an agreement, properly authorized*
20 *by the agreement and this division, for payment of a fee.*

21 (5) *Structure a program in a manner that would result in a*
22 *negative amortization of any of an individual's debts, unless a*
23 *creditor that is owed a negatively amortizing debt agrees to refund*
24 *or waive the finance charge upon payment of the principal amount*
25 *of the debt.*

26 (6) *Settle a debt or lead an individual to believe that a payment*
27 *to a creditor is in settlement of a debt to the creditor unless, at the*
28 *time of settlement, the individual receives a certification or*
29 *confirmation by the creditor that the payment is in full settlement*
30 *of the debt.*

31 (7) *Make a representation that:*

32 (A) *The provider will furnish money to pay bills or prevent*
33 *attachments.*

34 (B) *Payment of a certain amount will permit satisfaction of a*
35 *certain amount or range of indebtedness.*

36 (C) *Participation in a program will or may prevent litigation,*
37 *garnishment, attachment, repossession, foreclosure, eviction, or*
38 *loss of employment.*

39 (8) *Misrepresent that it is authorized or competent to furnish*
40 *legal advice or perform legal services.*

1 (9) *Represent that it is a not-for-profit entity unless it is*
2 *organized and properly operating as a not-for-profit entity under*
3 *the law of the state in which it was formed or that it is a tax-exempt*
4 *entity unless it has received certification of tax-exempt status from*
5 *the Internal Revenue Service.*

6 (10) *Take a confession of judgment or power of attorney to*
7 *confess judgment against an individual.*

8 (11) *Employ an unfair, unconscionable, or deceptive act or*
9 *practice, including the knowing omission of any material*
10 *information.*

11 (b) *If a provider furnishes debt settlement services to an*
12 *individual, the provider may not, directly or indirectly, do any of*
13 *the following:*

14 (1) *Purchase a debt or obligation of the individual.*

15 (2) *Receive from or on behalf of the individual either of the*
16 *following:*

17 (A) *A promissory note or other negotiable instrument other than*
18 *a check or a demand draft.*

19 (B) *A postdated check or demand draft.*

20 (3) *Lend money or provide credit to the individual, except as a*
21 *deferral of a settlement fee at no additional expense to the*
22 *individual.*

23 (4) *Obtain a mortgage or other security interest from any person*
24 *in connection with the services provided to the individual.*

25 (5) *Force or otherwise require a consumer to deposit their funds*
26 *into a specific financial institution.*

27 (6) *Except as permitted by federal law, disclose the identity or*
28 *identifying information of the individual or the identity of the*
29 *individual's creditors, except to:*

30 (A) *The commissioner, upon proper demand.*

31 (B) *A creditor of the individual, to the extent necessary to secure*
32 *the cooperation of the creditor in a program.*

33 (C) *The extent necessary to administer the program.*

34 (7) *Except as otherwise provided in Section 60040, provide the*
35 *individual less than the full benefit of a compromise of a debt*
36 *arranged by the provider.*

37 (8) *Charge the individual for or provide credit or other*
38 *insurance, coupons for goods or services, membership in a club,*
39 *access to computers or the Internet, or any other matter not directly*

1 *related to debt settlement services or educational services*
2 *concerning personal finance.*

3 *(9) Furnish legal advice or perform legal services, unless the*
4 *person furnishing that advice to or performing those services for*
5 *the individual is licensed to practice law.*

6 *(10) Advise individuals to stop payment on any of the accounts*
7 *being handled by the provider.*

8 *(c) This division does not authorize any person to engage in the*
9 *practice of law.*

10 *60045. No later than 30 days after a provider has been served*
11 *with notice of a civil action for violation of this division by or on*
12 *behalf of an individual who resides in this state at either the time*
13 *of an agreement or the time the notice is served, the provider shall*
14 *notify the commissioner in a record that it has been sued.*

15 *60046. A provider that advertises debt settlement services shall*
16 *disclose no information in conflict with the information specified*
17 *in paragraphs (3) and (4) of subdivision (d) of Section 60022.*

18 *60047. If a provider delegates any of its duties or obligations*
19 *under an agreement or this division to another person, including*
20 *an independent contractor, the provider is liable for conduct of*
21 *the person which, if done by the provider, would violate the*
22 *agreement or this division.*

23 *60048. (a) The commissioner may act on its own initiative or*
24 *in response to complaints and may receive complaints, take action*
25 *to obtain voluntary compliance with this division, refer cases to*
26 *the attorney general, and seek or provide remedies as provided in*
27 *this division.*

28 *(b) The commissioner may investigate and examine, in this state*
29 *or elsewhere, by subpoena or otherwise, the activities, books,*
30 *accounts, and records of a person that provides or offers to provide*
31 *debt settlement services, or a person to which a provider has*
32 *delegated its obligations under an agreement or under this division,*
33 *to determine compliance with this division. Information that*
34 *identifies individuals who have agreements with the provider shall*
35 *not be disclosed to the public. In connection with the investigation,*
36 *the commissioner may do either of the following:*

37 *(1) Charge the person the reasonable expenses necessarily*
38 *incurred to conduct the examination.*

39 *(2) Require or permit a person to file a statement under oath*
40 *as to all the facts and circumstances of a matter to be investigated.*

1 (c) The commissioner may adopt rules to implement the
2 provisions of this division in accordance with the California
3 Administrative Procedure Act (Chapter 3.5 (commencing with
4 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
5 Code).

6 (d) The commissioner may enter into cooperative arrangements
7 with any other federal or state agency having authority over
8 providers and may exchange with any of those agencies
9 information about a provider, including information obtained
10 during an examination of the provider.

11 (e) The commissioner shall, by rule, establish reasonable fees
12 to be paid by providers for the expense of administering this
13 division.

14 (f) The commissioner shall, by rule, adopt dollar amounts
15 instead of those specified in Sections 60001, 60011, 60017, 60040,
16 60049, and 60051 to reflect inflation, as measured by the United
17 States Bureau of Labor Statistics Consumer Price Index for All
18 Urban Consumers or, if that index is not available, another index
19 adopted by rule by the commissioner. The commissioner shall
20 adopt a base year and adjust the dollar amounts, effective on July
21 1 of each year, if the change in the index from the base year, as
22 of December 31 of the preceding year, is at least 10 percent. The
23 dollar amount shall be rounded to the nearest one hundred dollars
24 (\$100), except that the amounts in Section 60040 shall be rounded
25 to the nearest dollar.

26 (g) The commissioner shall notify registered providers of any
27 change in dollar amounts made pursuant to subdivision (f) and
28 make that information available to the public.

29 60049. (a) The commissioner may enforce this division and
30 rules adopted under this division by taking one or more of the
31 following actions:

32 (1) Ordering a provider or a director, employee, or other agent
33 of a provider to cease and desist from any violations.

34 (2) Ordering a provider or a person that has caused a violation
35 to correct the violation, including making restitution of money or
36 property to a person aggrieved by a violation.

37 (3) Subject to adjustment of the dollar amount pursuant to
38 subdivision (f) of Section 60048, imposing a civil penalty not
39 exceeding ten thousand dollars (\$10,000) for each violation on a
40 provider or a person that has caused a violation.

1 (4) *Prosecuting a civil action to do either or both of the*
2 *following:*

3 (A) *Enforce an order.*

4 (B) *Obtain restitution or an injunction or other equitable relief,*
5 *or both.*

6 (5) *Intervening in an action brought under Section 60051.*

7 (b) *Subject to adjustment of the dollar amount pursuant to*
8 *subdivision (f) of Section 60048, if a person violates or knowingly*
9 *authorizes, directs, or aids in the violation of a final order issued*
10 *under paragraph (1) or (2) of subdivision (a), the commissioner*
11 *may impose a civil penalty not exceeding twenty thousand dollars*
12 *(\$20,000) for each violation.*

13 (c) *The commissioner may maintain an action to enforce this*
14 *division in the County of Sacramento.*

15 (d) *The commissioner may recover the reasonable costs of*
16 *enforcing this division under subdivisions (a) to (c), inclusive,*
17 *including attorney's fees based on the hours reasonably expended*
18 *and the hourly rates for attorneys of comparable experience in the*
19 *community.*

20 (e) *In determining the amount of a civil penalty to impose under*
21 *subdivision (a) or (b), the commissioner shall consider the*
22 *seriousness of the violation, the good faith of the violator, any*
23 *previous violations by the violator, the deleterious effect of the*
24 *violation on the public, the net worth of the violator, and any other*
25 *factor the commissioner considers relevant to the determination*
26 *of the civil penalty.*

27 60050. (a) *In this section, "insolvent" means the following:*

28 (1) *Having generally ceased to pay debts in the ordinary course*
29 *of business other than as a result of good-faith dispute.*

30 (2) *Being unable to pay debts as they become due.*

31 (3) *Being insolvent within the meaning of the federal bankruptcy*
32 *law (11 U.S.C. Sec. 101 et seq.).*

33 (b) *The commissioner may suspend, revoke, or deny renewal of*
34 *a provider's registration if:*

35 (1) *A fact or condition exists that, if it had existed when the*
36 *registrant applied for registration as a provider, would have been*
37 *a reason for denying registration.*

38 (2) *The provider has committed a material violation of this*
39 *division or a rule or order of the commissioner under this division.*

40 (3) *The provider is insolvent.*

1 (4) *The provider or an employee or affiliate of the provider has*
2 *refused to permit the commissioner to make an examination*
3 *authorized by this division, failed to comply with paragraph (2)*
4 *of subdivision (b) of Section 60048 within 15 days after request,*
5 *or made a material misrepresentation or omission in complying*
6 *with paragraph (2) of subdivision (b) of Section 60048.*

7 (5) *The provider has not responded within a reasonable time*
8 *and in an appropriate manner to communications from the*
9 *commissioner.*

10 (c) *If the commissioner suspends or revokes a provider's*
11 *registration, the provider may appeal and request a hearing*
12 *pursuant to the California Administrative Procedure Act (Chapter*
13 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
14 *Title 2 of the Government Code).*

15 60051. (a) *If an individual voids an agreement pursuant to*
16 *subdivision (b) of Section 60041, the individual may recover in a*
17 *civil action all money paid by or on behalf of the individual*
18 *pursuant to the agreement, in addition to the recovery under*
19 *paragraphs (3) and (4) of subdivision (c).*

20 (b) *If an individual voids an agreement pursuant to subdivision*
21 *(a) of Section 60041, the individual may recover in a civil action*
22 *three times the total amount of the fees, charges, money, and*
23 *payments made by the individual to the provider, in addition to*
24 *the recovery under paragraph (4) of subdivision (c).*

25 (c) *Subject to subdivision (d), an individual with respect to*
26 *whom a provider violates this division may recover the following*
27 *in a civil action from the provider and any person that caused the*
28 *violation:*

29 (1) *Compensatory damages for injury, including noneconomic*
30 *injury, caused by the violation.*

31 (2) *Except as otherwise provided in subdivision (d) and subject*
32 *to adjustment of the dollar amount pursuant to subdivision (f) of*
33 *Section 60048, with respect to a violation of Section 60022, 60024,*
34 *60025, 60026, 60040, 60043, or subdivisions (a) or (b) of Section*
35 *60044, the greater of the amount recoverable under paragraph*
36 *(1) or five thousand dollars (\$5,000).*

37 (3) *Punitive damages.*

38 (4) *Reasonable attorney's fees and costs.*

1 (d) In a class action, except for a violation of paragraph (5) of
2 subdivision (a) of Section 60044, the minimum damages provided
3 in paragraph (2) of subdivision (c) shall not apply.

4 (e) In addition to the remedy available under subdivision (c),
5 if a provider violates an individual's rights under Section 60025,
6 the individual may recover in a civil action all money paid or
7 deposited by or on behalf of the individual pursuant to the
8 agreement, except for amounts paid to creditors.

9 (f) A provider shall be not liable under this section for a
10 violation of this division if the provider proves that the violation
11 was not intentional and resulted from a good-faith error
12 notwithstanding the maintenance of procedures reasonably adapted
13 to avoid the error. An error of legal judgment with respect to a
14 provider's obligations under this division is not a good-faith error.
15 If, in connection with a violation, the provider has received more
16 money than authorized by an agreement or this division, the
17 defense provided by this subdivision shall not be available unless
18 the provider refunds the excess within two business days of learning
19 of the violation.

20 60052. If an act or practice of a provider violates both this
21 division and Chapter 5 (commencing with Section 17200) of Part
22 2 of Division 7 of the Business and Professions Code, an individual
23 may not recover under both for the same act or practice.

24 60053. (a) An action or proceeding brought pursuant to
25 subdivision (a), (b), or (c) of Section 60049 shall be commenced
26 within four years after the conduct that is the basis of the
27 commissioner's complaint.

28 (b) An action brought pursuant to Section 60051 shall be
29 commenced within two years after the latest of one of the following:

30 (1) The individual's last transmission of money to a provider.

31 (2) The date on which the individual discovered or reasonably
32 should have discovered the facts giving rise to the individual's
33 claim.

34 (3) Termination of actions or proceedings by the commissioner
35 with respect to a violation of the division.

36 (c) The period prescribed in paragraph (2) of subdivision (b)
37 shall be tolled during any period during which the provider or, if
38 different, the defendant has materially and willfully misrepresented
39 information required by this division to be disclosed to the

1 individual, if the information so misrepresented is material to the
2 establishment of the liability of the defendant under this division.

3 60054. In applying and construing this division, consideration
4 shall be given to the need to promote uniformity of the law with
5 respect to its subject matter among states that enact this division.

6 60055. This division shall not apply to agreements between an
7 individual and a provider for the performance of debt settlement
8 services that was entered into prior to the operative date of this
9 division.

10 60056. If any provision of this division or its application to
11 any person or circumstance is held invalid, the invalidity shall not
12 affect other provisions or applications of this division that can be
13 given effect without the invalid provision or application, and to
14 this end the provisions of this division are severable.

15 60057. The division shall be operative on June 1, 2008.

16 SEC. 3. Division 22 (commencing with Section 70000) is added
17 to the Financial Code, to read:

18
19 **DIVISION 22. DEBT MANAGEMENT**

20
21 **CHAPTER 1. GENERAL PROVISIONS**

22
23 70000. This division shall be known and may be cited as the
24 Debt Management Act.

25 70001. As used in this division, the following definitions shall
26 apply:

27 (a) "Debt management services" means the receiving of money
28 from a consumer for the purpose of distributing that money to or
29 among one or more of the consumer's creditors in full or partial
30 payment of the consumer's obligations in accordance with a plan
31 arranged or administered by the provider of the debt management
32 service, on terms or conditions more favorable to the consumer
33 than in the contract or agreement, whether express or implied,
34 between the consumer and the creditor.

35 (b) "Licensee" means a person licensed under this division who
36 solicits debt management services business within this state, and
37 in connection with that solicitation and in return for a fee or other
38 consideration, provides debt management services to a consumer
39 residing in this state.

40 (c) "Department" means the Department of Corporations.

1 (d) “Commissioner” means the Commissioner of Corporations.

2 (e) “Consumer” means an individual who owes money to one
3 or more creditors for personal, family, or household purposes and
4 includes an individual who owes money jointly with one or more
5 other individuals.

6 (f) “Person” means an individual, organization, or entity.

7 70002. (a) The provisions of this division shall not apply to
8 the following when engaged in the regular course of their
9 respective professions and businesses:

10 (1) An attorney at law, if providing debt management services
11 incidental to his or her law practice.

12 (2) A certified public account, if providing debt management
13 services incidental to his or her accounting practice.

14 (3) Banks, savings and loan associations, or financing and
15 lending institutions duly authorized and licensed to transact
16 business under the laws of this state or of the United States.

17 (4) A title insurer or escrow company, while doing an escrow
18 business.

19 (5) An employee or agent of a licensee, acting solely in the
20 capacity of an employee or agent for that licensee.

21 (6) A judicial officer or person acting under court order.

22 (7) Bill paying service providers and money transmitters that
23 do not initiate any contact with individual creditors of the consumer
24 to arrange a new payment schedule, compromise, or otherwise
25 modify terms of the debt.

26 (8) A credit counseling agency licensed under Division 23
27 (commencing with Section 80000).

28 (b) Licensees shall be exempt from the provisions of Chapter
29 14 (commencing with Section 1800) of Division 1.

30 70003. All licensing fees collected by the commissioner
31 pursuant to this division shall be deposited in the Debt
32 Management Fund, which is hereby created in the State Treasury
33 and, notwithstanding Section 13340 of the Government Code, is
34 continuously appropriated to the department for the purposes of
35 administering this division.

CHAPTER 2. LICENSING

70010. (a) No person shall engage in the business of providing debt management services without having first obtained a license from the commissioner.

(b) A contract for debt management services made by a person without a license shall be null and void.

70011. (a) A person desiring to act, or to continue to act, with respect to consumers in this state as a provider of debt management services shall apply to the commissioner for an initial license and for renewal of a license granted in accordance with this division.

(b) The initial licensure application and the renewal application shall each be in a form prescribed by the commissioner and shall be accompanied by those documents as required by the commissioner, including, but not limited to, the blank copy of the written agreement the applicant intends to use as described in Section 70021. The commissioner may refuse an application if it contains erroneous or incomplete information.

(c) The initial application for licensure may be filed at any time and shall include an initial application fee as determined by the commissioner. A license under this chapter shall expire on December 31 of the year it was approved. An annual renewal application shall be filed by December 1 of each year for the following year and shall include a renewal fee as determined by the commissioner.

(d) The commissioner shall take action on an initial licensure application within 60 days and on a renewal application within 30 days after the commissioner has accepted the application as complete.

(e) The commissioner shall not issue a license unless he or she, upon investigation, finds the applicant, and its controlling parties, if applicable, to be of sound financial standing, financially responsible, familiar with debt management services and consumer education programs, and of an overall character and fitness as to warrant belief that the business of the applicant will be operated honestly and fairly within the purposes of this division.

(f) (1) Upon written request by the applicant, the applicant is entitled to a hearing on the question of the applicant's qualifications for licensure if the commissioner has notified the applicant in writing that the applicant was denied a license or if

1 *the commissioner has not issued a license within 60 days after the*
2 *application for the license was accepted as complete by the*
3 *commissioner.*

4 *(2) A request for a hearing may not be made more than 90 days*
5 *after the application was accepted as complete or more than 90*
6 *days after the commissioner mailed a written notice to the applicant*
7 *stating that the application was denied and the reasons for the*
8 *denial.*

9 *70012. (a) At the time of filing the licensure application, the*
10 *applicant shall furnish to the commissioner a cash or surety bond*
11 *in the amount of twenty-five thousand dollars (\$25,000).*

12 *(b) Each bond shall be conditioned upon the faithful accounting*
13 *of all moneys collected upon accounts entrusted to the licensee,*
14 *and its employees and agents, and upon the faithful observance*
15 *of the provisions of this division and the written agreement between*
16 *the licensee and the consumer. The bond shall be approved by the*
17 *commissioner and filed in the office of the commissioner. The bond*
18 *shall remain in force and effect until the cash or surety is released*
19 *from liability by the commissioner, or until the cash or surety bond*
20 *is canceled by the surety. The surety may cancel the bond and be*
21 *relieved of further liability by delivering 30 days' written notice*
22 *to the commissioner. The cancellation does not affect any liability*
23 *incurred or accrued prior to the termination of the 30-day period.*

24 *(c) Any person who suffers any loss or damage by reason of the*
25 *neglect or default of a licensee or his or her employees or agents*
26 *or by the licensee's violation of any of the provisions of this*
27 *division or of the written agreement between the licensee and the*
28 *consumer shall have a right of action against the licensee and the*
29 *sureties on his or her bond. No action shall be brought on the bond*
30 *by any person after the expiration of two years from the time when*
31 *the act or default occurred.*

32 *(d) When an action is commenced on the bond of a licensee, the*
33 *commissioner may require the filing of a new bond, and*
34 *immediately upon the recovery of any action on the bond, the*
35 *licensee shall file a new bond. Failure of a licensee to file a new*
36 *bond within 10 days of the recovery on a bond, or within 10 days*
37 *after notification that a bond is required, shall constitute sufficient*
38 *grounds for the suspension or revocation of a license.*

39 *(e) The applicant for licensure may, in lieu of the bond, deposit*
40 *cash, a certificate of deposit, or government bonds in the amount*

1 of twenty-five thousand dollars (\$25,000). These deposits shall be
2 made with the commissioner and are subject to the same terms
3 and conditions as provided with respect to the bond in this section.
4 Any interest or earnings on those deposits shall be payable to the
5 licensee.

6
7 *CHAPTER 3. REGULATION*
8

9 70020. (a) Within two business days of receipt, all funds
10 received by a licensee from or on behalf of a consumer for payment
11 to a creditor or creditors shall be deposited by the licensee for the
12 benefit of the consumer in a trust account in a federally insured
13 state or federal bank, savings bank, savings and loan association,
14 or credit union. Any trust account established to receive consumer
15 funds shall be free from trustee process and shall not be available
16 to creditors of the licensee.

17 (b) A licensee shall do all of the following:

18 (1) Maintain separate records of account for each consumer.

19 (2) Remit funds received from or on behalf of consumers for
20 payment to creditors to the creditors within 15 days after receipt
21 or by the scheduled disbursement date, whichever is later, unless
22 the reasonable payment of one or more of the consumer's
23 obligations requires that these funds be held for a longer period
24 so as to accumulate a certain sum of funds.

25 (3) Correct or remedy any misdirected payments resulting from
26 an error by the licensee and reimburse the consumer for any actual
27 costs or fees imposed by a creditor as a result of that misdirection.

28 (c) A licensee shall not commingle trust accounts established
29 for the benefit of consumers with any operating accounts of the
30 licensee or any other accounts.

31 70021. (a) A licensee shall not perform debt management
32 services for a consumer unless the consumer and the licensee have
33 first executed a written agreement with regard to the debt
34 management services to be provided by the licensee. A copy of the
35 completed written agreement shall be provided to the consumer.

36 (b) Each written agreement between a consumer and a licensee
37 shall be signed and dated by the consumer and shall include all
38 of the following:

39 (1) The name and address of the consumer and the licensee.

1 (2) A full description of the debt management services to be
2 performed for the consumer by the licensee.

3 (3) Complete and conspicuous disclosure of any fair and
4 reasonable fees to be charged to the consumer for debt
5 management services.

6 (4) Disclosure, if applicable, that the licensee may also receive
7 payments from creditors.

8 (5) Disclosure of the existence of the cash or surety bond on
9 file with or the deposit held by the commissioner.

10 (6) A notice that the consumer may contact the commissioner
11 with any questions or concerns regarding the licensee.

12 (7) A notice that the consumer may cancel the written agreement
13 prior to midnight of the third business day after the day on which
14 the consumer signed the agreement.

15 (8) A notice that either party may cancel the written agreement
16 by providing a written notice 10 days in advance of the proposed
17 cancellation to the other party.

18 (9) A complete list of the consumer's obligations that are subject
19 to the written agreement and the names and addresses of the
20 creditors holding those obligations.

21 (10) A full description and schedule of the periodic amounts to
22 be remitted to the licensee for payment to the consumer's creditors,
23 the amount to be remitted to each creditor, and the estimated
24 period of time required to discharge the listed debts under the
25 proposed plan.

26 (11) The identification of the federally insured state or federal
27 bank, savings bank, savings and loan association, or credit union
28 where funds remitted by a consumer for payment to one or more
29 creditors will be held.

30 (12) A notice to the consumer that by executing the written
31 agreement the consumer authorizes the federally insured state or
32 federal bank, savings bank, savings and loan association, or credit
33 union to disclose financial records relating to the trust account in
34 which the consumer's funds are held pursuant to this division to
35 the commissioner during the course of any examination of the
36 licensee by the commissioner.

37 (13) A notice as follows:
38

1 *NOTICE TO CONSUMER: Do not sign this written agreement*
2 *before you read it. You must be given a copy of this written*
3 *agreement.*
4

5 *(c) Each applicant for licensure under this division shall file*
6 *with the application a blank copy of the written agreement intended*
7 *to be used between the licensee and consumer and shall also file*
8 *with the commissioner a copy of all subsequent changes and*
9 *amendments to the written agreement.*

10 *70022. Each licensee shall do all of the following:*

11 *(a) Provide each consumer receiving its debt management*
12 *services periodic written reports accounting for funds received*
13 *from the consumer for payment to the creditor or creditors listed*
14 *in the consumer's written agreement with the licensee and*
15 *disbursements made to each creditor on the consumer's behalf*
16 *since the last report. The licensee shall provide these reports to*
17 *the consumer at least monthly.*

18 *(b) Maintain in its offices, or other location as permitted by the*
19 *commissioner, the books, accounts, and records necessary for the*
20 *commissioner to determine whether the licensee is complying with*
21 *the provisions of this division and the rules and regulations adopted*
22 *by the commissioner pursuant to this division.*

23 *(1) These books, accounts, and records shall be maintained*
24 *separate and apart from any other business in which the licensee*
25 *is involved.*

26 *(2) The licensee shall maintain all of these books, accounts, and*
27 *records for six years following the final transaction with each*
28 *consumer. Retention of copies created by photographic or*
29 *electronic imaging shall satisfy this requirement.*

30 *(c) Within 120 days after the close of its fiscal year, cause an*
31 *independently audited financial reconciliation of the trust account*
32 *to be prepared.*

33 *(d) Respond to any complaint initiated by a consumer within*
34 *10 business days of receipt of the complaint.*

35 *(e) Allow rescission of a written agreement when written notice*
36 *of rescission is given by the consumer within three business days*
37 *after the consumer signed the written agreement. Notice of*
38 *rescission, if given by mail, shall be deemed given when deposited*
39 *in a mailbox with the correct address and postage prepaid. Upon*
40 *receipt of notice of the rescission, the licensee shall return to the*

1 consumer all undisbursed trust funds and all service fees received
2 from or on behalf of the consumer.

3 (f) Allow cancellation of a written agreement at any time upon
4 receipt of written notice 10 days in advance of the termination
5 date. At the time of termination, the licensee shall return to the
6 consumer all undisbursed trust funds received from or on behalf
7 of the consumer, including all unearned service fees.

8 (g) Notify the commissioner in writing within 15 days of a
9 change in the licensee's control parties, including, but not limited
10 to, the licensee's officers or directors. The licensee shall provide
11 to the commissioner any information that the commissioner
12 considers necessary to approve the change or to determine whether
13 a new application for a license is required because of the change
14 in control parties. If the commissioner so requires, the licensee
15 shall file an application for a new license, together with all
16 applicable application fees, within 30 days.

17 (h) Notify the commissioner in writing within 15 days of a
18 change in the place of business or the name under which the license
19 is issued and submit the license to the commissioner for
20 modifications to reflect the change.

21 (i) Notify the commissioner in writing within 15 days after
22 termination of the business of the licensee or of a branch office
23 and surrender the license to the commissioner.

24 CHAPTER 4. PROHIBITIONS

25 70030. (a) A licensee shall not do any of the following:

26
27 (1) Accept business from a consumer unless its appears on the
28 basis of a reasonable budget analysis, reduced to writing and
29 given to the consumer, that the consumer can reasonably meet the
30 payments agreed upon by the licensee and the consumer and that
31 the agreed upon payment is sufficient to pay the service charges
32 to the licensee and the amount of the proposed payments to
33 creditors as agreed upon by the licensee and consumer. The
34 licensee shall make the budget analysis available for the inspection
35 by the commissioner. A budget analysis shall not be deemed
36 unreasonable if facts, which would prove it to be inaccurate, were
37 not furnished to the licensee by the consumer.

38 (2) Structure a written agreement for the consumer that, at the
39 conclusion of the projected term for the consumer's participation
40

1 *in the debt management service agreement, would result in negative*
2 *amortization of any of the consumer's obligations to creditors.*

3 *(3) Advertise its debt management services in any manner*
4 *whatsoever which includes any false, misleading or deceptive*
5 *statement or representation with regard to the services to be*
6 *performed by the licensee or the charges to be made for those debt*
7 *management services.*

8 *(4) Purchase any debt or obligation of a consumer.*

9 *(5) Lend money or provide credit to any consumer.*

10 *(6) Obtain a mortgage or other security interest in a consumer's*
11 *property.*

12 *(7) Operate as a debt collector in this state.*

13 *(8) Execute any written agreement to be signed by the debtor*
14 *unless the written agreement is filled in completely.*

15 *(b) No licensee, or any employee, agent, manager, or officer of*
16 *that licensee, shall be a manager, officer, or owner, of any creditor*
17 *or a subsidiary of any creditor, that is receiving or will receive*
18 *payments from the licensee on behalf of a consumer with whom*
19 *the licensee has contracted pursuant to a written agreement.*

20
21 *CHAPTER 5. ENFORCEMENT*
22

23 *70040. (a) A person providing debt management services*
24 *without a license and a licensee that violates any provision of this*
25 *division or any rule adopted by the commissioner pursuant to this*
26 *division or that, through any unfair or deceptive practice, causes*
27 *actual damage to a consumer are subject to enforcement action*
28 *pursuant to subdivision (b).*

29 *(b) The following enforcement actions may be taken by the*
30 *commissioner or, as applicable, by an aggrieved consumer for*
31 *violations of any provision of this division or any rule adopted*
32 *pursuant to this division or for any unfair or deceptive practices*
33 *that cause actual damage to the consumer:*

34 *(1) After notice and hearing, a cease and desist order from the*
35 *commissioner.*

36 *(2) When in the opinion of the commissioner immediate action*
37 *is required to protect the public interest, a cease and desist order*
38 *without prior notice and hearing after which the commissioner*
39 *shall afford an opportunity for a hearing.*

1 (3) After notice and hearing, forfeiture of that portion of the
2 required cash or surety bond or deposit as may make aggrieved
3 parties whole.

4 (4) A civil action by the commissioner through the Attorney
5 General, after which a court may assess a civil penalty payable
6 to the state of not more than five thousand dollars (\$5,000).

7 (5) A civil action by an aggrieved consumer in which that
8 consumer has the right to recover actual damages from the licensee
9 or unlicensed person in an amount determined by the court in
10 addition to costs of the civil action together with reasonable
11 attorney's fees.

12 (6) Revocation, suspension, or nonrenewal of the licensee's
13 license.

14 70041. (a) After notice and hearing, the commissioner may
15 suspend, revoke, or decline to renew a license if the commissioner
16 finds that one of the conditions of subdivision (b) is satisfied.

17 (b) The following are grounds for suspension, revocation, or
18 nonrenewal of a license issued under this division:

19 (1) The licensee or a control party, in an initial application or
20 a renewal application, has made a material misrepresentation of
21 fact which the person knows or should have known was false when
22 made.

23 (2) A fact or condition exists that, if it had existed at the time
24 the licensee applied for a license, would have been grounds for
25 denying the application.

26 (3) The licensee knowingly violates this division or rule or a
27 order validly adopted by the commissioner under authority of this
28 division.

29 (4) The licensee is insolvent.

30 (5) The licensee refuses to permit the commissioner to make an
31 examination authorized by this division.

32 (6) The licensee fails to respond within a reasonable time and
33 in an appropriate manner to communications from the
34 commissioner.

35 (c) The list set forth in subdivision (b) shall not limit the
36 authority of the commissioner to deny renewal of a license to a
37 licensee who does not then meet the requirements for the initial
38 issuance of a license.

39 70042. The commissioner may also exercise the following
40 powers and functions:

1 (a) Receive and act on complaints, take action to obtain
2 voluntary compliance with this division, or refer cases to the
3 Attorney General, who shall appear for and represent the
4 commissioner in court.

5 (b) Adopt reasonable administrative regulations, not inconsistent
6 with this division, to carry out the requirements of this division.

7 (c) Examine the books, accounts, and records of any licensee,
8 make an investigation to determine compliance with this division,
9 and charge the reasonable expenses necessarily incurred to
10 conduct the examinations to the licensee. In no event shall a
11 licensee be examined more than once in any two-year period unless
12 for cause shown based on consumer complaints or other exigent
13 reasons as determined by the commissioner.

14 70043. The commissioner may take any of the following actions
15 at his or her discretion:

16 (a) Make public or private investigations within or outside of
17 this state necessary to determine whether any person has violated,
18 or is about to violate, any provision of this division or any rule or
19 order promulgated pursuant to this division, or to aid in the
20 enforcement of the law.

21 (b) Make public any information concerning any violation of
22 this division or any rule or order promulgated pursuant to this
23 division.

24 70044. (a) For the purpose of any investigation or proceeding
25 under this division, the commissioner, or any officer designated
26 by the commissioner, may administer oaths and affirmations,
27 subpoena witnesses, compel their attendance, take evidence, and
28 require the production of any books, papers, correspondence,
29 memoranda, agreements, or other documents or records the
30 commissioner deems relevant or material to the inquiry.

31 (b) In case of refusal to obey a subpoena issued to a person,
32 the superior court may upon application by the commissioner,
33 issue to the person an order requiring the person to appear before
34 the commissioner, or an officer designated by the commissioner,
35 and produce documentary evidence, if so ordered, or to give
36 evidence relating to the matter under investigation or in question.
37 Failure to obey the order of the court may be punished by the court
38 as contempt.

39 (c) No person is excused from attending or testifying, or from
40 producing any document or record, before the commissioner in

1 *obedience of a subpoena of the commissioner, or any officer*
2 *designated by the commissioner, in any proceeding instituted by*
3 *the commissioner on the ground that the testimony or evidence*
4 *required of the person may incriminate the person or subject the*
5 *person to a penalty or forfeiture. However, after validly claiming*
6 *the privilege against self-incrimination, no individual may be*
7 *prosecuted or subjected to any penalty or forfeiture for, or on*
8 *account of, any transaction, matter, or thing for which the person*
9 *is compelled to testify or produce pursuant to this division, except*
10 *that the individual testifying is not exempt from prosecution and*
11 *punishment for perjury or contempt committed in testifying.*

12 *(d) The cost of any review, examination, audit, or investigation*
13 *made by the commissioner under this division shall be paid to the*
14 *commissioner by the person subject to the review, examination,*
15 *audit, or investigation. The commissioner may maintain an action*
16 *for the recovery of these costs in any court of competent*
17 *jurisdiction. In determining the cost, the commissioner may use*
18 *the actual amount of the salary or other compensation paid to the*
19 *persons making the review, examination, audit, or investigation*
20 *plus the actual amount of expenses, including overhead reasonably*
21 *incurred in the performance of the work.*

22 70045. (a) *Whenever it appears to the commissioner that a*
23 *licensee has engaged, or is about to engage, in any act or practice*
24 *constituting a violation of this division, or any rule or order*
25 *promulgated pursuant to this division, the commissioner may, at*
26 *his or her discretion, revoke the license or bring an action in the*
27 *name of the people of the State of California in the superior court*
28 *to enjoin the acts or practices or to enforce compliance. Upon a*
29 *proper showing, a permanent or preliminary injunction, a*
30 *restraining order, or a writ of mandate shall be granted and a*
31 *receiver or conservator may be appointed.*

32 (b) *The commissioner, upon learning of a person providing*
33 *services in this state without a license required by this division,*
34 *shall immediately file an action to require the cessation of those*
35 *business operations until the person obtains a license from the*
36 *commissioner.*

37 70046. (a) *If, upon inspection or investigation based upon a*
38 *complaint or otherwise, the commissioner has cause to believe*
39 *that a person is engaged in business without a license required by*
40 *this division, or a person or licensee is violating any provision of*

1 *this division or any rule or order promulgated pursuant to this*
2 *division, the commissioner may issue a citation to that person or*
3 *licensee in writing describing with particularity the basis of the*
4 *citation. Each citation may contain an order to desist and refrain*
5 *and an assessment of an administrative penalty not to exceed two*
6 *thousand five hundred dollars (\$2,500) or, if the violation is willful,*
7 *not to exceed ten thousand dollars (\$10,000).*

8 *(b) If within 30 days from the receipt of the citation, the person*
9 *or licensee cited fails to notify the commissioner that he or she*
10 *intends to request a hearing, the citation shall be deemed final.*
11 *Any hearing under this section shall be conducted in accordance*
12 *with Chapter 5 (commencing with Section 11500) of Part 1 of*
13 *Division 3 of Title 2 of the Government Code.*

14 *(c) The sanctions authorized under this section shall be separate*
15 *from, and in addition to, all other administrative, civil, or criminal*
16 *remedies.*

17 *70047. In any action brought under this division, the*
18 *commissioner is entitled to receive costs, which, in the discretion*
19 *of the court, shall include an amount representing reasonable*
20 *attorney's fees and any related expenses incurred in the action.*

21 *70048. The remedies available to the commissioner pursuant*
22 *to this division are not exclusive and may be sought and employed*
23 *in any combination deemed advisable by the commissioner to*
24 *enforce the provisions of this division.*

25 *70049. Any amounts collected by the commissioner in any*
26 *action shall be paid into the State Corporations Fund.*

27 *70050. This division shall not apply to agreements between a*
28 *consumer and a provider of debt management services entered*
29 *into prior to the operative date of this division.*

30 *70051. This division shall become operative on June 1, 2008.*

31 *SEC. 4. Division 23 (commencing with Section 80000) is added*
32 *to the Financial Code, to read:*

33
34 *DIVISION 23. CREDIT COUNSELORS*

35
36 *CHAPTER 1. GENERAL PROVISIONS*

37
38 *80000. This division is known and may be cited as the Credit*
39 *Counselors Law.*

1 80001. *The following definitions apply for the purposes of this*
2 *division:*

3 (a) *“Agency” means a nonprofit community service organization*
4 *that meets all of the following criteria:*

5 (1) *Is tax exempt under Section 501(c)(3) of the Internal Revenue*
6 *Code.*

7 (2) *Its principal functions are the following:*

8 (A) *Consumer credit education.*

9 (B) *Counseling on consumer credit problems and family budgets.*

10 (C) *Arranging or administering debt management plans.*

11 (D) *Arranging or administering debt settlement plans.*

12 (3) *Limits its board of directors to retailers, lenders in the*
13 *consumer credit field, educators, attorneys, social service*
14 *organizations, employer and employee organizations, and related*
15 *groups with expertise in finance or that serve educational,*
16 *benevolent, fraternal, religious, charitable, social, or reformatory*
17 *purposes.*

18 (4) *Incorporates in this state or any other state as a nonprofit*
19 *corporation and operates pursuant to either the Nonprofit Public*
20 *Benefit Corporation Law (Part 2 (commencing with Section 5110)*
21 *of Division 2 of Title 1 of the Corporations Code) or the Nonprofit*
22 *Mutual Benefit Corporation Law (Part 3 (commencing with Section*
23 *7110) of Division 2 of Title 1 of the Corporations Code).*

24 (b) *“Commission” means the Department of Corporations.*

25 (c) *“Commissioner” means the Commissioner of Corporations.*

26 (d) *“Consumer” means an individual who owes money to one*
27 *or more creditors for personal, family, or household purposes and*
28 *includes an individual who owes money jointly with one or more*
29 *other individuals.*

30 (e) *“Counselor” means an employee or agent of the agency*
31 *who designs a debt management plan and provides consumer*
32 *budget planning, debt counseling, and personal financial education*
33 *services.*

34 (f) *“Debt management plan” or “DMP” a method of paying a*
35 *debtor’s obligations in installments on a monthly basis through a*
36 *program whereby an agency agrees to engage in distribution*
37 *services on behalf of a consumer, or multiple consumers in a joint*
38 *account situation, with the consumer’s creditors and under which*
39 *the consumer or consumer’s agent transfers funds of the consumer*

1 or control of those funds to the agency for distribution to the
2 consumer's creditors.

3 (g) "Debt settlement plan" means a method of paying a debtor's
4 obligations in a negotiated amount to each creditor on a one-time
5 basis.

6 (h) "Licensee" means a person licensed under this division.

7 (i) "Person" means any individual, firm, corporation, limited
8 liability company, partnership, association, trust, or legal or
9 commercial entity or group of individuals however organized.

10
11 *CHAPTER 2. LICENSING*
12

13 80010. An agency, as defined in Section 80001, shall obtain a
14 license from the commissioner. The application for the license
15 shall include all of the following:

16 (a) The name and address of the agency. If the agency is a
17 partnership, firm, or association, the application shall state the
18 name and address of each partner or member. If the agency is a
19 corporation or limited liability company, the application shall
20 state the name and address of each director, officer, member,
21 registered agent, and principal. If the agency is a business trust,
22 the application shall state the name and address of each trustee
23 and beneficiary.

24 (b) The address of each location where the agency will conduct
25 the business.

26 (c) Audited financial statements for the agency for the most
27 recent preceding fiscal year. If the agency does not have audited
28 financial statements, the agency shall submit unaudited financial
29 statements.

30 (d) Evidence that the agency meets all of the criteria listed in
31 subdivision (a) of Section 80001.

32 (e) A current copy of the agency's standard DMP agreement.

33 (f) Proof of accreditation through a nationally recognized
34 accrediting body such as the Council on Accreditation or the
35 International Standards Organization. If the agency has not had
36 the opportunity to obtain accreditation, it shall provide proof of
37 registration with a recognized accrediting body along with a
38 schedule under which it plans to obtain accreditation. The agency
39 shall obtain accreditation within six months of the date of its
40 application.

1 (g) *Proof of counselor certification through a nationally*
2 *recognized certification body approved by the commissioner.*

3 (h) *A written notice with the name, address, and telephone*
4 *number of the federally insured state or federal bank, savings*
5 *bank, savings and loan association, or credit union where the*
6 *agency maintains its trust account, the name in which the account*
7 *is held, and the account number. The account information required*
8 *by this subdivision shall be kept confidential pursuant to the laws*
9 *governing disclosure of public records, including the California*
10 *Public Records Act, Chapter 3.5 (commencing with Section 6250)*
11 *of Division 7 of Title 1 of the Government Code, and the rules*
12 *adopted thereunder.*

13 (i) *An irrevocable written consent providing that after licensure,*
14 *if the commissioner takes possession of the property and business*
15 *of the agency, all books, records, property, and business, including*
16 *trust accounts and any other accounts holding consumers' funds,*
17 *shall be immediately turned over to the commissioner or a receiver*
18 *appointed pursuant to this division. The consent shall be signed*
19 *by the agency and the federally insured state or federal bank,*
20 *savings bank, savings and loan association, or credit union where*
21 *the agency maintains its trust account. The consent shall be binding*
22 *upon the agency and the financial institution it designated. Any*
23 *objection to the consent shall be made pursuant to the laws of this*
24 *state in the forum in which the proceeding to take possession or*
25 *appointment of the receiver has been filed. The agency and the*
26 *financial institution it designated shall further consent to the*
27 *jurisdiction of the commissioner for the purpose of any*
28 *investigation or proceeding under this division. The consent*
29 *required by this subdivision shall include the name, title, and*
30 *signature of an official of the financial institution designated by*
31 *the agency who is authorized to consent on behalf of the institution*
32 *and the name, title, and signature of the chief executive officer or*
33 *president of the agency.*

34 (j) *Payment of an annual nonrefundable application fee of five*
35 *hundred dollars (\$500) and an additional fee of one hundred*
36 *dollars (\$100) for each additional agency location.*

37 (k) *Other information concerning the financial responsibility,*
38 *background, experience, and activities of the agency and the*
39 *persons identified in subdivision (a), as the commissioner may*
40 *require.*

1 80011. *The commissioner shall approve or deny an application*
2 *for licensure within 60 days after the date of receipt of an*
3 *application satisfying the requirements of Section 80010. The*
4 *commissioner may extend the 60-day period for 30 additional*
5 *days. If the commissioner does not act on the application before*
6 *the expiration of this period, the application shall be deemed*
7 *approved, and the commissioner shall issue a license to the agency.*

8 80012. (a) *The commissioner may deny an application for a*
9 *license for any of the following reasons:*

10 (1) *The application is not accompanied by the requisite fee*
11 *payment.*

12 (2) *The application contains information that is materially*
13 *erroneous or incomplete.*

14 (3) *An officer, director, owner, partner, member, or employee*
15 *of the agency was convicted of a crime involving the violation of*
16 *state or federal securities laws or of a crime involving moral*
17 *turpitude or dishonesty, or a civil judgment in a case involving*
18 *any of these matters was entered against him or her.*

19 (4) *The commissioner finds that the financial responsibility,*
20 *experience, character, or general fitness of the agency or its*
21 *officers, directors, owners, partners, members, employees, or*
22 *agents is not adequate to demonstrate that the agency will be*
23 *operated in compliance with this division.*

24 (b) *Within seven days of denying the application, the*
25 *commissioner shall inform the applicant in writing of the reasons*
26 *for the denial. Within 30 days of the date of receipt of the denial,*
27 *the applicant may request a hearing pursuant to the provisions of*
28 *Chapter 5 (commencing with Section 11500) of Part 1 of Division*
29 *3 of Title 2 of the Government Code.*

30 80013. *A license issued pursuant to this division shall remain*
31 *in force until it has been surrendered, revoked, or suspended. The*
32 *surrender, revocation, or suspension of a license shall not effect*
33 *any preexisting legal right or obligation of the licensee.*

34
35 *CHAPTER 3. REGULATION*
36

37 80020. *The licensee shall maintain and keep current and*
38 *accurate books, records, and accounts relating to its business in*
39 *accordance with generally accepted accounting principles and*
40 *store them in a readily accessible place for a period of not less*

1 *than five years from the ending date of the fiscal year in which*
2 *any transaction recorded therein occurred.*

3 *80021. The licensee shall deposit any money received from a*
4 *consumer for its services in a non-interest-bearing trust,*
5 *maintained specifically for purposes of administering a debt*
6 *management plan or debt settlement plan, in a federally insured*
7 *state or federal bank, savings bank, savings and loan association,*
8 *or credit union.*

9 *80022. The licensee shall maintain at all times a cash or surety*
10 *bond in the amount of twenty-five thousand dollars (\$25,000)*
11 *issued by a surety licensed in this state. The bond shall be*
12 *conditioned upon the obligor honestly and faithfully applying all*
13 *funds received, honestly and faithfully performing all obligations*
14 *and undertakings required under this division, and paying to the*
15 *state and to any person all money that becomes due and owing to*
16 *the state or to any person owed by the obligor of the bond.*

17 *80023. The licensee shall not assess a consumer a fee or other*
18 *charge or receive money from, or on behalf of, a consumer to offset*
19 *the licensee's actual and necessary expenses except as provided*
20 *in Section 80031.*

21 *80024. The licensee shall report all of the following to the*
22 *consumer at least once every three months, or upon the consumer's*
23 *request, for any debt management plan or debt settlement plan:*

24 *(a) The total amount received from the consumer.*

25 *(b) The total amount paid to each creditor.*

26 *(c) The total amount any creditor has agreed to accept as*
27 *payment in full on any debt owed by the consumer.*

28 *(d) Any amount paid to the licensee by the consumer.*

29 *(e) Any amount held in reserve.*

30 *80025. The licensee shall maintain accreditation by an*
31 *independent accrediting organization, including either the Council*
32 *on Accreditation or the International Standards Organization,*
33 *with sector certification.*

34 *80026. The licensee shall not engage in any act or practice in*
35 *violation of Section 17200 or 17500 of the Business and*
36 *Professions Code.*

37 *80027. The licensee shall adopt and implement on a continuous*
38 *basis, policies or procedures of best practices that are designed*
39 *to prevent improper debt management or debt settlement practices*
40 *and to prevent theft and misappropriation of funds. Failure to*

1 *comply with any of the following requirements shall constitute*
2 *improper debt management or debt settlement practices, as*
3 *applicable:*

4 *(a) Obtain counselor certification conducted by a nationally*
5 *recognized third-party certification program that certifies that all*
6 *of the licensee's counselors receive proper training and are*
7 *qualified to provide financial assistance prior to performing*
8 *counseling services in this state.*

9 *(b) Disburse funds no later than 15 days after receipt of valid*
10 *funds, or by a scheduled disbursement date, whichever is the longer*
11 *duration of time.*

12 *(c) Transmit funds utilizing electronic payment processing when*
13 *available.*

14 *(d) Implement an inception date policy, which shall include an*
15 *agreement that a consumer's first disbursement pursuant to a debt*
16 *management plan shall be received within 90 days of agreeing to*
17 *the debt management plan service. The debt management plan*
18 *shall include all items described in Section 80024 and shall be*
19 *provided to the consumer prior to the inception date of the plan.*
20 *A description of best practices of the licensee and of the consumer*
21 *complaint resources shall be issued to the consumer not later than*
22 *the first payment date.*

23 *(e) Respond to, and research, any complaint initiated by a*
24 *consumer within five business days of receipt of the complaint and*
25 *resolve each complaint in a prompt and reasonable manner.*

26 *(f) Prohibit a policy requiring a debt management plan*
27 *consumer to utilize additional ancillary services.*

28 *(g) Provide access to debt management plan services regardless*
29 *of the consumer's ability to pay fees related to the debt*
30 *management plan, lack of creditor participation, or the amount*
31 *of the consumer's outstanding debt.*

32 *(h) Implement policies that specifically prohibit credit*
33 *counselors from receiving financial incentives or additional*
34 *compensation based on the outcome of the counseling process.*

35 *(i) Prohibit the practice of paying referral fees to consumers*
36 *or other third parties who refer new clients to the licensee.*

37 *(j) Disclose in all written contracts with consumers the portion*
38 *of funding that is provided by creditors for the licensee.*

39 *(k) Disclose in all written contracts for debt management plans*
40 *or debt settlement plans that these plans are not suitable for all*

1 consumers and that consumers may request information on other
2 options, including, but not limited to, bankruptcy.

3 (l) Fully disclose all services to be provided by the licensee and
4 any initial and ongoing fees to be charged by the licensee for
5 services, including, but not limited to, contributions to the licensee.

6 (m) Prohibit the licensee or any affiliate of the licensee from
7 purchasing debt from a consumer.

8 (n) Prohibit the licensee from offering loans to consumers
9 involving the charging of interest.

10 (o) Prominently disclose in written contracts with consumers
11 any financial arrangement between the agency and any lender or
12 any provider of financial services if the licensee receives any form
13 of compensation for referring consumers to that lender or provider
14 of financial services.

15 (p) Provide professional liability insurance coverage.

16 (q) Provide the consumer a written individualized evaluation
17 of his or her financial status and an initial debt management plan
18 for the consumer's debts with specific recommendations regarding
19 actions the consumer should take.

20 (r) Provide the consumer enrolling in a debt management plan
21 a written reliable estimate of the length of time it will take to
22 complete the plan and identify the total debt owed to each creditor
23 included in the plan, the proposed payment to each creditor, and
24 any fees that would be charged for administering the plan. The
25 estimate shall be provided prior to receipt of the consumer's first
26 deposit.

27 (s) Provide a copy of the licensee's best practices to the
28 consumer, upon request.

29 80028. The licensee shall insert the following statement, in not
30 less than 10-point type, in its debt management plan and debt
31 settlement plan agreements:

32 "Complaints related to this agreement may be directed to the
33 California Department of Corporations. This agency has adopted
34 best practices for debt management plans and debt settlement
35 plans, and a copy of this document will be provided to you upon
36 request."

37 80029. The licensee shall provide written notice to the
38 commissioner within 30 days of the date of its dissolution or its
39 termination of the activities for which it is licensed under this
40 division.

1 80030. *The licensee shall submit to the commissioner, at its*
2 *expense, an audit report containing audited financial statements*
3 *covering the calendar year or the fiscal year, if the licensee has*
4 *an established fiscal year. The reports shall be submitted 120 days*
5 *after the close of the calendar or fiscal year, as applicable. The*
6 *licensee shall submit with the annual financial statements a*
7 *declaration that conforms to Section 2015.5 of the Code of Civil*
8 *Procedure executed by an official authorized by the board of the*
9 *licensee stating that the licensee complies with this chapter. The*
10 *annual audited financial statements shall also include a separate*
11 *written statement that identifies the name, address, contact person,*
12 *and telephone number for the licensee.*

13 80031. (a) *The licensee shall receive from a consumer not*
14 *more than the following maximum amounts to offset its actual and*
15 *necessary expenses for its services:*

16 (1) *A one-time sum not to exceed fifty dollars (\$50) for education*
17 *and counseling services combined in connection with debt*
18 *management or debt settlement services.*

19 (2) *A sum not to exceed 8 percent of the money disbursed*
20 *monthly or thirty-five dollars (\$35) per month, whichever is less,*
21 *for debt management plans.*

22 (3) *A sum not to exceed 15 percent of the amount of the debt*
23 *forgiven for negotiated debt settlement plans.*

24 (b) *A licensee shall not require any advance payment or deposit*
25 *on a debt settlement plan and may require payment of fees only*
26 *upon successful settlement of the debt.*

27 (c) *The fees allowed pursuant to this section shall be the only*
28 *fees that a licensee may charge for any services related to a debt*
29 *management plan or a debt settlement plan. The commissioner*
30 *has the authority to change these fees from time to time to insure*
31 *that consumers have continued access to these services.*

32 (d) *For purposes of this section, a household shall be considered*
33 *one consumer.*

34 80032. (a) *Each licensee shall pay to the commissioner its pro*
35 *rata share of all costs and expenses reasonably incurred in the*
36 *administration of this division, as estimated by the commissioner,*
37 *for the ensuing year and any deficit actually incurred or anticipated*
38 *in the administration of the program in the year in which the*
39 *assessment is made. The assessment shall be based on the number*
40 *of debt management plan clients served by each licensee.*

(b) On or before the 20th day of May in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 30 days thereafter. If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) If a licensee fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its license is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

(d) All money paid or collected under this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund upon appropriation by the Legislature.

CHAPTER 4. PROHIBITIONS

80040. A creditor shall only enter into an agreement pursuant to a debt management plan or a debt settlement plan with an agency, as defined in subdivision (a) of Section 80001, if the agency is licensed under this division.

CHAPTER 5. ENFORCEMENT

80050. The commissioner may take any of the following actions at his or her discretion:

(a) Make public or private investigations within or outside of this state necessary to determine whether any person has violated, or is about to violate, any provision of this division or any rule or

1 order promulgated pursuant to this division, or to aid in the
2 enforcement of the law.

3 (b) Make public any information concerning any violation of
4 this division or any rule or order promulgated pursuant to this
5 division.

6 80051. (a) For the purpose of any investigation or proceeding
7 under this division, the commissioner, or any officer designated
8 by the commissioner, may administer oaths and affirmations,
9 subpoena witnesses, compel their attendance, take evidence, and
10 require the production of any books, papers, correspondence,
11 memoranda, agreements, or other documents or records the
12 commissioner deems relevant or material to the inquiry.

13 (b) In case of refusal to obey a subpoena issued to a person,
14 the superior court may upon application by the commissioner,
15 issue to the person an order requiring the person to appear before
16 the commissioner, or an officer designated by the commissioner,
17 and produce documentary evidence, if so ordered, or to give
18 evidence relating to the matter under investigation or in question.
19 Failure to obey the order of the court may be punished by the court
20 as contempt.

21 (c) No person is excused from attending or testifying, or from
22 producing any document or record, before the commissioner in
23 obedience of a subpoena of the commissioner, or any officer
24 designated by the commissioner, in any proceeding instituted by
25 the commissioner on the ground that the testimony or evidence
26 required of the person may incriminate the person or subject the
27 person to a penalty or forfeiture. However, after validly claiming
28 the privilege against self-incrimination, no individual may be
29 prosecuted or subjected to any penalty or forfeiture for, or on
30 account of, any transaction, matter, or thing for which the person
31 is compelled to testify or produce pursuant to this division, except
32 that the individual testifying is not exempt from prosecution and
33 punishment for perjury or contempt committed in testifying.

34 (d) The cost of any review, examination, audit, or investigation
35 made by the commissioner under this division shall be paid to the
36 commissioner by the person subject to the review, examination,
37 audit, or investigation. The commissioner may maintain an action
38 for the recovery of these costs in any court of competent
39 jurisdiction. In determining the cost, the commissioner may use
40 the actual amount of the salary or other compensation paid to the

1 *persons making the review, examination, audit, or investigation*
2 *plus the actual amount of expenses, including overhead reasonably*
3 *incurred in the performance of the work.*

4 80052. (a) *Whenever it appears to the commissioner that a*
5 *licensee has engaged, or is about to engage, in any act or practice*
6 *constituting a violation of this division, or any rule or order*
7 *promulgated pursuant to this division, the commissioner may, at*
8 *his or her discretion, revoke the license or bring an action in the*
9 *name of the people of the State of California in the superior court*
10 *to enjoin the acts or practices or to enforce compliance. Upon a*
11 *proper showing, a permanent or preliminary injunction, a*
12 *restraining order, or a writ of mandate shall be granted and a*
13 *receiver or conservator may be appointed.*

14 (b) *The commissioner, upon learning of a person providing*
15 *services in this state without a license required by this division,*
16 *shall immediately file an action to require the cessation of those*
17 *business operations until the person obtains a license from the*
18 *commissioner.*

19 80053. (a) *If, upon inspection or investigation based upon a*
20 *complaint or otherwise, the commissioner has cause to believe*
21 *that a person is engaged in business without a license required by*
22 *this division, or a person or licensee is violating any provision of*
23 *this division or any rule or order promulgated pursuant to this*
24 *division, the commissioner may issue a citation to that person or*
25 *licensee in writing describing with particularity the basis of the*
26 *citation. Each citation may contain an order to desist and refrain*
27 *and an assessment of an administrative penalty not to exceed two*
28 *thousand five hundred dollars (\$2,500) or, if the violation is willful,*
29 *not to exceed ten thousand dollars (\$10,000).*

30 (b) *If within 30 days from the receipt of the citation, the person*
31 *or licensee cited fails to notify the commissioner that he or she*
32 *intends to request a hearing, the citation shall be deemed final.*
33 *Any hearing under this section shall be conducted in accordance*
34 *with Chapter 5 (commencing with Section 11500) of Part 1 of*
35 *Division 3 of Title 2 of the Government Code.*

36 (c) *The sanctions authorized under this section shall be separate*
37 *from, and in addition to, all other administrative, civil, or criminal*
38 *remedies.*

39 80054. *In any action brought under this division, the*
40 *commissioner is entitled to receive costs, which in the discretion*

1 of the administrative or civil court, shall include an amount
2 representing reasonable attorney's fees and any related expenses
3 incurred in the action.

4 80055. The remedies available to the commissioner pursuant
5 to this chapter are not exclusive and may be sought and employed
6 in any combination deemed advisable by the commissioner to
7 enforce the provisions of this division.

8 80056. Any amounts collected by the commissioner in any
9 action shall be paid into the State Corporations Fund.

10 80057. This division shall be operative on June 1, 2008.

11 SEC. 5. The provisions of this act are severable. If any
12 provision of this act or its application is held invalid, that invalidity
13 shall not affect other provisions or applications that can be given
14 effect without the invalid provision or application.

15 SEC. 6. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

24 ~~SECTION 1. Section 12102.1 of the Financial Code is amended~~
25 ~~to read:~~

26 ~~12102.1. A licensee under this division or any person engaged~~
27 ~~in the same type of business as licensed under this division whether~~
28 ~~that person is licensed or not shall be deemed to be an agent as~~
29 ~~defined under Sections 506 and 506a of the Penal Code and subject~~
30 ~~to the penalties under those sections.~~